REMARKS / ARGUMENTS

This is intended as a full and complete response to the Office Action dated March 5, 2008, having a shortened statutory period for response extended two months to expire on August 5, 2008. Please reconsider the claims pending in the application for reasons discussed below.

Interview Summary

On July 21, 2008, a telephone interview was conducted between the Examiner and Chance Hardie. Traversal, as presented herein, of the § 102 and § 103 rejections was discussed. While an agreement was not reached, the Examiner indicated that she would reconsider the rejections.

Claim Rejections under 35 U.S.C. § 112

Claims 13, 14, 17, 18, 21, and 24 stand rejected under 35 U.S.C. § 112, second paragraph. In response, Applicants have amended the claims to overcome the § 112 issues identified by the Examiner. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of the claims.

Claim Rejections Under 35 U.S.C. § 102

Claims 13-24 stand rejected under 35 U.S.C. § 102(a) or (b) as being anticipated by *Allemand* (WO 2004099453, cited using its English equivalent, US 2007/0034054). However, Applicants submit that *Allemand* fails to qualify as prior art given the priority claim of the present application. In particular, WO 2004099453 was published November 18, 2004, which is after the filing date of February 25, 2004 for the French application to which priority is claimed. The present application is a national stage of PCT/FR05/500748 and is therefore a translation of this international application, which upon comparison with priority

documents already filed is the same as the French application to which priority is claimed.

Therefore, *Allemand* cannot anticipate under § 102 any claims presented herein. Accordingly, Applicants request withdrawal of the rejection and allowance of the claims.

Claim 24 stands rejected under 35 U.S.C. § 102(b) as being anticipated by *Ducrocq* (WO 03056044, cited using its English equivalent, US 2005/0103159). Applicants have canceled claim 24, without prejudice. Accordingly, Applicants respectfully request withdrawal of the rejection.

Claim Rejections Under 35 U.S.C. § 103

Claims 13-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ducrocq* (WO 03056044, cited using its English equivalent, US 2005/0103159) combined with U.S. patent 6,245,122 issued to *Meyers*.

The Examiner bears the initial burden of establishing a prima facie case of obviousness. See MPEP § 2141. Establishing a prima facie case of obviousness begins with first resolving the factual inquiries of Graham v. John Deere Co. 383 U.S. 1 (1966). The factual inquiries are as follows:

(A) determining the scope and content of the prior art;

(B) ascertaining the differences between the claimed invention and the prior art;

(C) resolving the level of ordinary skill in the art; and

(D) considering any objective indicia of nonobviousness.

Once the Graham factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.

Further, "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness". *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006); cited with approval in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740-41 (2007).

Respectfully, Applicants submit that the Examiner has not properly characterized the teachings of the references and/or the claims at issue. Accordingly, a prima facie case of obviousness has not been established.

Claim 13 recites a method in which "prior to the decreasing, at least one of the carbon monoxide and hydrogen concentration is regulated to a setpoint C1 different than the setpoint C2." Further new claim 27 recites a method that includes "regulating at least one of the carbon monoxide and hydrogen to a setpoint C1" and "regulating at least one of the carbon monoxide and hydrogen to a setpoint C2 …, wherein the setpoint C2 is different than the setpoint C1." However, *Ducrocq* and *Meyers* lack any indication of regulation to two different setpoints. Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

Double Patenting Rejection

Claims 13-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-33 of copending Application No. 10/555,313. Claims 13-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31-63 of copending Application No. 10/497,454. Applicants acknowledge the double patenting rejection made in the Office Action mailed March 5, 2008, and respectfully request that the rejection be held in abeyance because (i) no claim in the present application is currently allowable and (ii) the application on which the rejection is made (App. No. 10/555,313) has not issued. Because it is possible that no claims will issue, or that the claims of the present application will be amended in such a way to overcome the Examiner's concerns regarding double patenting, Applicants defer responding until the present rejection ripens into an actual double patenting rejection.

CONCLUSION

Accordingly, it is believed that the present application now stands in condition for allowance, and allowance of the claims is respectfully requested. Early notice to this effect is earnestly solicited. Should the Examiner believe a telephone call would expedite the prosecution of the application, she is invited to call the undersigned attorney at the number listed below.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

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